

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE )  
ANTITRUST LITIGATION )  
 ) NO. 11-CV-2509-LHK  
THIS DOCUMENT RELATES TO: )  
ALL ACTIONS. )  
\_\_\_\_\_ )

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VIDEOTAPED DEPOSITION OF PATRICK FLYNN

Wednesday, April 3, 2013

Reported By:

KATHLEEN WILKINS, CSR #10068, RPR-RMR-CRR-CCRR-CLR

02:31:35 1 Q. And was -- were those companies referred  
02:31:39 2 to as hands-off or -- sorry. Let me just ask that  
02:31:45 3 question.

02:31:46 4 A. Sure. Sure.

02:31:48 5 I don't -- I don't recall if we labeled  
02:31:51 6 those companies in any way other than don't call  
02:31:59 7 in to these companies.

02:32:05 8 Q. Do you recall why a company was added or  
02:32:11 9 removed from that list?

02:32:14 10 MR. RUBIN: Objection. Form.

02:32:16 11 THE WITNESS: I didn't see any additions  
02:32:18 12 or -- or subtractions, you know, from the list.

02:32:23 13 BY MR. HARVEY:

02:32:24 14 Q. So -- I see.

02:32:26 15 Did you have any understanding of why  
02:32:28 16 the companies that were on the list were on the  
02:32:30 17 list?

02:32:31 18 A. I believe the one company that I  
02:32:34 19 remember being on the list was NVIDIA, and that  
02:32:37 20 was because, I believe, that they were -- and  
02:32:41 21 still are, to my knowledge -- a key vendor to  
02:32:44 22 Apple.

02:32:45 23 Q. Do you recall whether ATI was also on  
02:32:49 24 that list?

02:32:50 25 A. ATI could have been on that list.

02:32:52 1 Q. Was ATI a key vendor for Apple?

02:32:55 2 A. I -- I don't -- I don't know. I don't

02:32:57 3 know.

02:33:04 4 Q. Do you recall Google ever being on that

02:33:05 5 list?

02:33:06 6 A. I don't ever recall Google being a

02:33:08 7 company that we couldn't cold call folks.

02:33:16 8 Q. Okay. Do you recall Adobe being a -- a

02:33:20 9 hands-off company or a do-not-cold-call company?

02:33:23 10 A. I do recall Adobe being on the list.

02:33:26 11 Q. Do you have any understanding of why

02:33:27 12 Adobe was on the list?

02:33:28 13 A. I -- I don't.

02:33:29 14 Q. Okay.

02:33:30 15 A. I believe it was in regards to some

02:33:34 16 vendor relationship.

02:33:45 17 Q. Do you have any understanding of who was

02:33:47 18 responsible for putting a company on that list?

02:33:55 19 A. No, I don't.

02:33:57 20 Q. Do you have any understanding that

02:33:59 21 Steve Jobs had a role in the companies that appear

02:34:03 22 on that list?

02:34:04 23 MR. RUBIN: Objection. Form.

02:34:06 24 THE WITNESS: I'm -- I'm sure that Steve

02:34:08 25 had influence on that -- on that -- on that list.

02:34:12 1 BY MR. HARVEY:

02:34:13 2 Q. And what leads you to be sure of that?

02:34:16 3 MR. RUBIN: Objection. Form.

02:34:19 4 THE WITNESS: Steve connected with a lot

02:34:20 5 of people, and so I know that, you know, part of

02:34:28 6 Apple's success is having key partners. So -- and

02:34:32 7 I believe he was, you know, pretty involved in,

02:34:35 8 you know, developing and building those

02:34:37 9 partnerships.

02:34:38 10 BY MR. HARVEY:

02:34:40 11 Q. Do you believe that he was also involved

02:34:42 12 in -- well, strike that.

02:34:57 13 Do you have any understanding of whether

02:34:59 14 Danielle Lambert had any role with respect to the

02:35:02 15 companies that were on that list?

02:35:04 16 A. I don't believe she did.

02:35:05 17 Q. Okay. What leads you to think that she

02:35:09 18 did not have a role?

02:35:14 19 A. Well, her role was focused on -- on

02:35:16 20 execution. And so I just don't think she was

02:35:25 21 privy to those discussions that -- you know, at

02:35:28 22 Steve's level with external folks.

02:35:42 23 Q. Do you recall how this list was

02:35:44 24 maintained at Apple in the sense of how did you

02:35:49 25 know about it?

02:47:39 1 A. I do.

02:47:40 2 Q. Do you have any understanding of who she

02:47:42 3 was at the time?

02:47:43 4 A. No, I don't.

02:47:44 5 Q. Okay. Do you see how she wrote to

02:47:46 6 Bruce Chizen and others at Adobe that Bruce and

02:47:50 7 Steve Jobs have an agreement that we are not to

02:47:54 8 solicit any Apple employees and vice versa?

02:47:56 9 A. I do see that.

02:47:58 10 Q. Does that refresh your recollection of

02:48:00 11 whether Apple's restriction with respect to Adobe

02:48:03 12 was reciprocated?

02:48:06 13 A. It does not, no.

02:48:08 14 Q. Okay. If we can talk about Google

02:48:34 15 briefly. And this concerns when you were still at

02:48:37 16 Apple. Do you recall when Google was first placed

02:48:49 17 on Apple's hands-off list?

02:48:51 18 A. I do not.

02:48:52 19 Q. Do you recall why Google was placed on

02:48:54 20 the list?

02:48:58 21 A. I don't, no.

02:48:59 22 Q. Okay. Are you familiar with an e-mail

02:49:12 23 list that was used at Apple in 2005 that read,

02:49:16 24 "U.S. recruiting all@group.apple.com"?

02:49:22 25 A. I don't specifically remember that, no.

02:49:29 1 Q. If you could take a look at what's been  
02:49:32 2 previously marked as Plaintiffs' Exhibit 563.  
02:49:42 3 And just let me know once you've had  
02:49:44 4 chance to look at it.  
02:49:47 5 A. I'm finished.  
02:49:52 6 Q. Okay. If you look in the "to" field,  
02:49:54 7 there's that e-mail list that I just described to  
02:49:56 8 you. Does that refresh your recollection of what  
02:49:59 9 this e-mail list was?  
02:50:01 10 A. Once again, I don't remember that  
02:50:04 11 specific group, that title, but I would assume  
02:50:07 12 that it's the whole Apple -- or US recruitment  
02:50:14 13 team at Apple.  
02:50:15 14 Q. And that -- that included you, correct?  
02:50:18 15 A. At that time, yes.  
02:50:19 16 Q. So you received this e-mail from  
02:50:21 17 Danielle Lambert on February 26th, 2005, correct?  
02:50:26 18 A. Yes.  
02:50:27 19 Q. Okay. Here it says:  
02:50:30 20 "Please add Google to your  
02:50:32 21 hands-off list. We recently agreed  
02:50:36 22 not to recruit from one another, so  
02:50:38 23 if you hear of any recruiting  
02:50:39 24 they're doing against us, please be  
02:50:42 25 sure to let me know. Please also be

02:50:45 1 sure to honor our side of the deal."

02:50:47 2 At this time -- and apologies, I have to

02:50:50 3 go back and look at my notes -- were you directly

02:50:52 4 reporting to Ms. Lambert?

02:50:59 5 A. At this time, I -- I don't believe I

02:51:00 6 was.

02:51:01 7 Q. Okay. So at this time she was the head

02:51:04 8 of HR at Apple?

02:51:06 9 A. I think she was, yes.

02:51:10 10 Q. Okay. Does this refresh your

02:51:11 11 recollection of why Google was placed on Apple's

02:51:16 12 hands-off list?

02:51:18 13 MR. RUBIN: Objection. Form.

02:51:19 14 THE WITNESS: I don't know why they were

02:51:20 15 on the list.

02:51:21 16 BY MR. HARVEY:

02:51:22 17 Q. Does Ms. Lambert's e-mail suggest to you

02:51:25 18 that it was a result of an agreement with Google?

02:51:29 19 MR. RUBIN: Objection. Form.

02:51:35 20 THE WITNESS: I don't know if there was

02:51:36 21 an agreement with Google. Someone agreed to not,

02:51:39 22 you know, recruit from one another. But I --

02:51:42 23 yeah.

02:51:42 24 BY MR. HARVEY:

02:51:42 25 Q. Okay.

02:51:43 1 A. I don't know who -- who agreed to that  
02:51:45 2 and why.

02:51:48 3 Q. Do you know who else, aside from Google,  
02:51:50 4 would have been the other party to the agreement?

02:51:52 5 MR. RUBIN: Objection. Form.

02:51:55 6 THE WITNESS: I do not, no.

02:51:57 7 BY MR. HARVEY:

02:51:57 8 Q. Do you think it's likely that it was, in  
02:51:59 9 fact, Google?

02:51:59 10 MR. RUBIN: Objection. Form.

02:52:01 11 THE WITNESS: I -- I do.

02:52:02 12 BY MR. HARVEY:

02:52:03 13 Q. Okay. You do think that it is likely  
02:52:05 14 that it was Google?

02:52:06 15 MR. RUBIN: Objection. Form.

02:52:07 16 THE WITNESS: It appears to be Google.

02:52:10 17 BY MR. HARVEY:

02:52:12 18 Q. Okay. When -- when Ms. Lambert wrote,  
02:52:14 19 "Please add Google to your hands-off list," did  
02:52:19 20 you understand that to mean that -- that you  
02:52:23 21 should communicate this to the -- the recruiters  
02:52:27 22 you supervised?

02:52:28 23 A. Yes.

02:52:28 24 Q. Okay. And so this would have been  
02:52:31 25 discussed at the weekly meetings you described

02:52:33 1 earlier?

02:52:34 2 A. Potentially, yes.

02:52:38 3 Q. Okay. Okay. Oh, and at the end she

02:52:41 4 says, "Please also be sure to honor our side of

02:52:45 5 the deal."

02:52:48 6 Do you have an understanding of what

02:52:49 7 that meant in terms of what she expected you and

02:52:52 8 other Apple recruiters to do to honor's Apple side

02:52:57 9 of that deal?

02:52:57 10 MR. RUBIN: Objection. Form.

02:52:59 11 THE WITNESS: I do know what she

02:53:01 12 expected.

02:53:02 13 BY MR. HARVEY:

02:53:02 14 Q. And what did she expect?

02:53:04 15 A. That we wouldn't cold call in to folks

02:53:09 16 at Google.

02:53:11 17 Q. Okay. Did you ever become aware while

02:53:26 18 you were at Apple of any instances in which Google

02:53:31 19 recruited from Apple and Apple took steps to

02:53:35 20 contact Google to try to enforce the agreement

02:53:37 21 that was reached?

02:53:39 22 MR. RUBIN: Objection. Form.

02:53:40 23 THE WITNESS: I do not recall any of

02:53:41 24 those instances.

02:53:44 25 BY MR. HARVEY:

02:53:44 1 Q. Okay. I'm going to show you an e-mail  
02:53:46 2 that has been previously introduced as Plaintiffs'  
02:53:51 3 Exhibit 277 at Ms. Lambert's deposition. And if  
02:53:56 4 you could please take a look at it and let me know  
02:54:00 5 once you've had a chance to review it.

02:54:02 6 A. Sure.

02:54:26 7 I'm done.

02:54:30 8 Q. Do you recall hearing anything about  
02:54:32 9 instances like this in which Steve Jobs would  
02:54:35 10 reach out to -- to another company and say, "Stop  
02:54:40 11 recruiting into Apple"?

02:54:42 12 A. I -- I don't know of Steve doing any  
02:54:45 13 such things, no.

02:54:48 14 Q. Do you know of anyone else at Apple  
02:54:48 15 doing such things?

02:54:51 16 A. I don't.

02:54:51 17 Q. Okay. Do you recall there being any  
02:55:12 18 similar agreements with other companies aside from  
02:55:15 19 Google in which -- in which Apple and the other  
02:55:19 20 company agreed not to recruit from one another?

02:55:21 21 MR. RUBIN: Objection. Form.

02:55:24 22 THE WITNESS: As I mentioned earlier, we  
02:55:27 23 could not recruit into Adobe -- or excuse me,  
02:55:34 24 NVIDIA. I do recall Adobe being on the list. But  
02:55:44 25 I -- the list wasn't a huge deal to my team

03:51:21 1 recollection of anything you -- you asked

03:51:24 2 Ms. Raymond to do for you?

03:51:27 3 A. It -- it -- it does not refresh my

03:51:28 4 recollection.

03:51:35 5 Q. Does this look like the -- the

03:51:35 6 do-not-call list at Google that you were familiar

03:51:38 7 with?

03:51:46 8 A. So I --

03:51:47 9 MR. HARVEY: Excuse me. Pardon me.

03:51:49 10 MR. RUBIN: Bless you.

03:51:50 11 THE WITNESS: I can't recall the whole

03:51:51 12 list. There were some standout companies just due

03:51:56 13 to the size of the company. But, I mean, this

03:51:59 14 does seem like a plausible list, from what I

03:52:03 15 recall.

03:52:03 16 BY MR. HARVEY:

03:52:04 17 Q. Was Apple a standout company?

03:52:08 18 A. It was.

03:52:10 19 Q. And I think you said size was an issue

03:52:13 20 in terms of whether it was standout or not.

03:52:16 21 Would you use that as a way to describe

03:52:18 22 Apple in the sense of why Apple is standing out to

03:52:20 23 you?

03:52:21 24 MR. RUBIN: Objection. Form.

03:52:22 25 THE WITNESS: No, I mean -- I believe

03:52:27 1 Apple was trying to develop, you know, a  
03:52:31 2 relationship with Google and potentially vice  
03:52:34 3 versa, so ...  
03:52:36 4 BY MR. HARVEY:  
03:52:37 5 Q. And that's why Apple stood out to you?  
03:52:42 6 A. That could be a reason, just because  
03:52:44 7 it's -- and it's a tech icon.  
03:52:47 8 Q. Mh-hmm. Okay. Would you say that --  
03:52:49 9 that Intel was a big employer in the Valley?  
03:52:55 10 MR. RUBIN: Objection. Form.  
03:52:57 11 THE WITNESS: Intel was one of the  
03:52:58 12 largest employers.  
03:52:59 13 BY MR. HARVEY:  
03:53:01 14 Q. Okay. Okay. Aside from the companies  
03:53:07 15 listed, I'd like to direct your attention to the  
03:53:09 16 kind of preface before where -- well, first, you  
03:53:12 17 know, I think I forgot to ask you this: Did you,  
03:53:15 18 in fact, receive this from Tiffany Raymond on --  
03:53:18 19 on Friday, September 21st, 2007?  
03:53:21 20 A. I -- I can't recall if I did. It  
03:53:25 21 appears as though that e-mail is addressed to me.  
03:53:38 22 Q. Okay. She says:  
03:53:41 23 "Here are the do not call  
03:53:43 24 companies. There are a bunch of  
03:53:45 25 sensitive ones as well. Do you want

03:53:47 1 me to include those as well? There  
03:53:50 2 isn't one doc with this info. It is  
03:53:53 3 embedded within a large Google PDF.  
03:53:56 4 Let me know if you want this in a  
03:53:58 5 Word doc or something."  
03:53:59 6 And then here's what I'm going to ask  
03:54:01 7 you about. Where it starts:  
03:54:03 8 "The following companies," and  
03:54:06 9 then a parenthetical, "and by  
03:54:08 10 association, their subsidiaries  
03:54:11 11 listed in Appendix A," end parens,  
03:54:14 12 "have special agreements with Google  
03:54:16 13 and are part of the 'Do not call'  
03:54:20 14 list."  
03:54:20 15 Do you see all of that?  
03:54:21 16 A. I do.  
03:54:23 17 Q. Okay. Is that the kind of language that  
03:54:25 18 was used at Google to describe the do-not-call  
03:54:26 19 list, specifically, you know, companies that have  
03:54:31 20 special agreements with Google?  
03:54:33 21 MR. RUBIN: Objection. Form.  
03:54:35 22 THE WITNESS: I don't know how a company  
03:54:37 23 got on the list, you know, the -- you know, kind  
03:54:42 24 of the genesis of those discussions or the  
03:54:45 25 process. So I really can't answer that.

03:57:41 1 Q. And then dropping down to where it

03:57:45 2 starts talking about the do-not-call list, it has

03:57:47 3 that same language that -- that Ms. Raymond quoted

03:57:54 4 in her earlier e-mail, correct?

03:57:57 5 A. This e-mail right here?

03:57:59 6 Q. Yeah.

03:58:00 7 And -- and specifically the sentence

03:58:02 8 that says, "The following companies" through "do

03:58:06 9 not cold call list."

03:58:09 10 A. It does appear to be the same.

03:58:12 11 Q. Okay. Could you please read through the

03:58:18 12 three -- and if you already have, you can just

03:58:21 13 tell me -- the three elements of the -- of the

03:58:25 14 do-not-call-list protocol that -- let's see. I

03:58:29 15 guess it starts with four and then goes through

03:58:32 16 six.

03:58:33 17 A. Yes, I've read it.

03:58:34 18 Q. Okay. Does that comport with your

03:58:36 19 understanding of how Google abided by or followed

03:58:41 20 the -- the other protocol as described here?

03:58:45 21 A. It does.

03:58:45 22 MR. RUBIN: Objection. Objection.

03:58:46 23 Form.

03:58:47 24 BY MR. HARVEY:

03:58:48 25 Q. Okay. And is this the same way, in your

03:58:56 1 experience, that Apple's hands-off list worked?

03:58:59 2 MR. RUBIN: Objection. Form.

03:59:04 3 THE WITNESS: I don't recall the

03:59:05 4 specific -- if there was a specific procedure at

03:59:09 5 Apple. I do know that if someone came to Apple

03:59:20 6 and was interested in working at Apple, it was

03:59:24 7 not -- not an issue if they were on the

03:59:25 8 do-not-call list.

03:59:27 9 BY MR. HARVEY:

03:59:27 10 Q. And does that sound like Number 5 to

03:59:29 11 you?

03:59:30 12 MR. RUBIN: Objection. Form.

03:59:31 13 BY MR. HARVEY:

03:59:31 14 Q. I'm sorry. Number 6?

03:59:33 15 MR. RUBIN: Same objection.

03:59:40 16 THE WITNESS: I don't know if they were

03:59:41 17 worded the same. But from a procedural

03:59:44 18 standpoint, I do recall it being the same.

03:59:47 19 BY MR. HARVEY:

03:59:49 20 Q. Okay. And then in terms of the -- the

03:59:52 21 first part, not to directly cold call in to the

03:59:55 22 companies on that list, is that the same way you

03:59:58 23 understood Apple's hands-off list to work?

04:00:01 24 MR. RUBIN: Objection. Form.

04:00:05 25 THE WITNESS: In theory, it was very

04:00:06 1 similar, where we wouldn't cold call companies  
04:00:09 2 that -- you know, that I was instructed not to at  
04:00:16 3 Apple.

04:00:16 4 BY MR. HARVEY:

04:00:17 5 Q. Mh-hmm. Okay. And then here in this  
04:00:21 6 document, it's pretty specific in that it states  
04:00:24 7 that the -- these rules also apply to the  
04:00:29 8 subsidiaries of the companies on the list.

04:00:32 9 Do you see that?

04:00:37 10 A. I do see that.

04:00:38 11 Q. And then I won't ask you anything  
04:00:41 12 specifically, but I'll just ask you in general,  
04:00:42 13 that throughout the attachment, the document lists  
04:00:47 14 various companies that are subsidiaries of  
04:00:48 15 different companies on the list to identify which  
04:00:50 16 ones those are.

04:00:52 17 Do you see that?

04:00:52 18 A. I see the list.

04:00:55 19 Q. Okay. Do you know whether Apple had the  
04:00:57 20 same approach in that once a company was on the  
04:01:01 21 hands-off list, all of its subsidiaries were also  
04:01:05 22 hands off?

04:01:08 23 A. I'm pretty sure that was the case.

04:01:12 24 Q. Okay. Okay. You can put that aside.

04:01:15 25 Thank you.

04:01:16 1                         Okay. Do you have any recollection of  
04:01:45 2 what the consequences potentially were to a  
04:01:50 3 recruiter at Google who failed to follow the rules  
04:01:54 4 set out in the document we just went through?

04:01:57 5                         MR. RUBIN: Objection. Form.

04:01:59 6                         THE WITNESS: I -- I -- I don't recall  
04:02:01 7 any consequences being discussed, if they failed  
04:02:07 8 to abide by the do-not-call-list protocol.

04:02:11 9                         BY MR. HARVEY:

04:02:11 10                         Q. Do you recall any instances in which  
04:02:15 11 someone at Google was punished for failing to  
04:02:18 12 follow the do-not-call list?

04:02:20 13                         A. I heard that someone was terminated for  
04:02:23 14 it.

04:02:26 15                         Q. And when did you first hear about that  
04:02:30 16 termination?

04:02:31 17                         A. I don't recall.

04:02:38 18                         Q. And do you recall anything else about  
04:02:41 19 that -- that recruiter, about, you know, the  
04:02:46 20 circumstances that gave rise to her termination?

04:02:50 21                         A. I believe it was in regards to not  
04:02:51 22 abiding by the protocol.

04:02:57 23                         Q. Do you know the way in which that  
04:02:59 24 recruiter failed to follow the protocol, I mean,  
04:03:03 25 kind of how she violated it?

04:03:05 1           A.     From what I understand, she made a cold  
04:03:08 2       call -- excuse me -- in to Apple.

04:03:17 3           Q.     Do you know whether that was sort of  
04:03:21 4       generally known to recruiters at Google and that  
04:03:24 5       someone got fired for failing to follow the  
04:03:29 6       protocol?

04:03:30 7           MR. RUBIN: Objection. Form.

04:03:32 8           THE WITNESS: I -- I don't know if that  
04:03:32 9       was generally known. The Google recruiting team  
04:03:35 10      was huge, and there was a lot of turnover. So it  
04:03:38 11      was -- it was -- I know it was tough for them to  
04:03:43 12      keep, you know, the flow of information  
04:03:47 13      consistent.

04:03:50 14           BY MR. HARVEY:

04:03:50 15           Q.     Do you recall whether you told any of  
04:03:52 16       the recruiters you supervised to be careful to  
04:03:55 17       follow the protocol because there might be  
04:03:57 18       consequences if you don't?

04:03:59 19           A.     I don't recall myself saying that  
04:04:03 20       there -- there will be consequences. I do know as  
04:04:08 21       part of my job that I'm pretty confident that I  
04:04:11 22       instructed them to not proactively or cold call  
04:04:15 23       folks on that list.

04:04:18 24           Q.     Do you recall anyone else sending that  
04:04:20 25       message to the recruiters? In other words, if you

1                         I, Kathleen A. Wilkins, Certified  
2 Shorthand Reporter licensed in the State of  
3 California, License No. 10068, hereby certify that  
4 the deponent was by me first duly sworn and the  
5 foregoing testimony was reported by me and was  
6 thereafter transcribed with computer-aided  
7 transcription; that the foregoing is a full,  
8 complete and true record of said proceedings.

9                         I further certify that I am not of  
10 counsel or attorney for either of any of the  
11 parties in the foregoing proceeding and caption  
12 named or in any way interested in the outcome of  
13 the cause in said caption.

14                         The dismantling, unsealing, or unbinding  
15 of the original transcript will render the  
16 reporter's Certificates null and void.

17                         In witness whereof, I have hereunto set  
18 my hand this day: April 4, 2013.

19                         \_\_\_\_\_ Reading and Signing was requested.

20                         \_\_\_\_\_ Reading and Signing was waived.

21                         \_\_\_\_X\_\_\_\_ Reading and signing was not requested.

22                         \_\_\_\_\_

23                         KATHLEEN A. WILKINS

24                         CSR 10068, RPR-RMR-CRR-CCRR-CLR

25